



Agenda Item Summary

File #: 23-00798

Agenda Date: 12/5/2023

Agenda Item Name:

Alachua County Forever Hunting Business Plan Update

Presenter:

Andi Christman, Land Conservation Program Manager, Environmental Protection Department, 352-264-6803

Description:

Alachua County Forever Hunting Business Plan principles, implementation and review.

Recommended Action:

Hear presentation and provide policy direction regarding risk mitigation measures

Prior Board Motions:

On 1/22/2013 the Board adopted the Alachua County Forever Hunting Business Plan (Exhibit 1), including recommended recreational hunting principles specific to the creation of recreational hunting opportunities on ACF managed lands.

Fiscal Note:

N/A

Strategic Guide:

Environment

Background:

The Board of County Commissioners (BoCC) adopts a Management Plan for each County Preserve which articulates the overall vision for that site. Each Plan furthers the Guiding Principles adopted by the BoCC for ACF-managed lands. Among these were a "no loss of conservation values" stewardship philosophy and a directive that any stewardship be consistent with Alachua County Forever's primary goal of preserving, restoring and enhancing environmental values. Three Business Plans have been adopted to inform preserve management activities: a Timber Business Plan, a Cattle Grazing Business Plan, and a Hunting Business Plan. Business Plans supplement the Management Plans where an activity or use departs from "business as usual" for County operations.

For many of the County's residents, hunting is a traditional form of recreation and means of obtaining food. It is enjoyed in many forms, and hunters value greatly their experiences in the outdoors. Hunting modes range from no hunting to general public hunts, typically managed in Florida by the Florida Fish

and Wildlife Conservation Commission (FWC). Landowners may further manage hunting on their lands with additional requirements and restrictions so long as these do not violate Florida Administrative Code and Florida Statutes that regulate hunting.

The Alachua County Forever Hunting Business Plan was developed with the purpose of: articulating principles that guide hunting on Alachua County Forever (ACF)-managed lands and recommending sound business practices and policies for adoption by the Alachua County Board of County Commissioners (BoCC) that would guide hunting on these lands. The Plan was adopted by the BoCC on January 22, 2013. The Plan discusses four potential Hunting Modes on Alachua County owned lands:

1. Public recreational hunting managed by the Florida Wildlife Conservation Commission (FWC);
2. Multi-year Hunting License Agreement, managed by Alachua County, with private individuals or a private group;
3. Limited-Hunt License Agreement, managed by Alachua County, with private individuals or a private group; and
4. No Hunting

The Plan acknowledges that both the State/FWC and the County may be exposed to liability for injuries or damage resulting from said hunting activities on County property. Accordingly, the Plan directs the County staff to pursue obtaining indemnification from the State/FWC and return to the Board with interagency agreements that “disclose with whom liability lies and allow the County to consider executing the agreements or seek some other arrangements.” County staff is currently working with the St. John’s River Water Management District (WMD) on the joint acquisition of conservation lands, where the WMD would have land management responsibilities regarding the jointly purchased property. Those land management responsibilities may include public recreational hunting managed by the FWC. Therefore, County staff are seeking policy direction from the Board as to what liability allocations/risk mitigation strategies that the Board would like County staff to pursue in negotiating said agreements with the WMD and/or FWC.

Additional background provided by County Attorney’s Office/Risk Management: County liability for property damage, personal injury or death resulting from hunting accidents on County owned property arises from premises liability law. In general, premises liability law provides that a property owner has a duty to keep its property reasonably safe for people that enter/use the property. The level of duty owed by the property owner varies depending on whether the people using the property are invitees, licensees, or trespassers. If a person is injured as a proximate cause of the property owner’s failure to satisfy its respective duty, then the property owner may be held liable for said injury, death or damage to property. The following is a brief discussion of the duties owed to invitees, licensees, and trespassers.

An invitee is someone that is either expressly invited or impliedly invited onto the property. A property owner owes the highest duty to invitees, which include: (1) duty to maintain the property in a reasonably safe condition; (2) a duty to correct dangerous conditions the property owner either knew or should have known existed; and (3) to warn of dangerous conditions.

A licensee is someone that chooses to enter property solely for their own convenience without being invited implicitly or expressly. A property owner owes the following duties to licensees: (1) to refrain from wanton negligence or willful misconduct which would injure the licensee; and (2) to warn of a defect or condition known to the property owner to be dangerous when such danger is not open to ordinary observation. There are three key differences between the duty owed to an invitee versus a

licensee. First, a property owner owes no duty to a licensee to fix unsafe conditions, there is only a duty to warn of unsafe conditions. Second, the duty to warn applies only when the property owner actually knows that the dangerous condition exists. Third, the duty to warn a licensee applies only if the dangerous condition is not open and obvious.

The duty owed to a trespasser can be divided into one of two categories: undiscovered trespassers and discovered trespassers. An undiscovered trespasser is someone that enters the property without invitation and the property owner does not know is on the property within 24 hours preceding an accident. The only duty a property owner owes to an undiscovered trespasser is to refrain from intentional misconduct that causes injuries to the undiscovered trespasser. This means that there is no duty to warn undiscovered trespassers of dangerous conditions. A discovered trespasser is someone on the property without invitation, but whose actual physical presence on the property is discovered by the property owner within 24 hours before an accident. To avoid liability to a discovered trespasser, the property owner must refrain from gross negligence or intentional misconduct that proximately causes injury to the discovered trespasser and must warn of dangerous conditions that are known to the property owner, but not readily observable.

While both the state and County enjoy sovereign immunity, section 768.28, Florida Statutes, provides a limited waiver of sovereign immunity for certain torts, including premises liability. Therefore, the County could be liable for up to \$200,000 per claim, with a maximum of \$300,000 per incident, for hunting accidents on County-owned property. However, there is a potential for the County to be liable for much more (e.g., millions of dollars) on a case-by-case basis if the Florida legislature approves a claims bill for the incident. Unlike the County, the Water Management Districts and private property owners enjoy near absolute immunity from liability when they open their lands for public recreation, including hunting (as to WMD's, see §373.1395, F.S.; as to private property owners, see §375.251, F.S).

Even though the WMDs enjoy a heightened level of immunity from liability, the WMDs employ various risk mitigation measures when allowing the FWC to conduct public recreational hunts on WMD property. These risk mitigation measures include, but are not necessarily limited to, the following:

1. FWC must agree to be responsible for all bodily injury, death, property damage or losses;
2. FWC must agree to indemnify and hold harmless the WMD;
3. The WMD disclaims any duty of care and the FWC assume the duty of care and agrees to assume all risks;
4. The WMD disclaims any representations or warranties that the property is safe or otherwise fit for FWC's intended use of the property, and the FWC must agree to take the property in its AS-IS condition and to assume all risks associated with using the property; and
5. FWC must secure the property with locked gates, signs, and security inspections.

Risk Mitigation Measures for BoCC Consideration: The following are risk mitigation measures for the Board to consider. The Board may select one, some, all or none of the following measures. Any measures selected by the Board would be including in a contract between the County and the individual or entity authorized to hunt ("Hunter") or authorized to manage a hunt ("Manager") on County-owned property:

1. No Hunting allowed on Alachua County Property.
2. Optional Recreational Hunting Mitigation Measures that can be applicable to all Three Modes of Hunting on County-Owned Property:

- a. County disclaims any representations or warranties regarding the fitness of the property for hunting/public access, any disclaims any duty of care owed to the Hunters/Manager or any of the Hunter's/Manager's invitees, licensees, or trespassers while the property is in the control of the Hunter/Manager. This would include a representation and warranty by the Hunters/Manager that it has inspected the property and has determined, in its sole judgment, that the property is sufficient in its AS-IS condition for its intended use of the property.
- b. The Hunter/Manager has a duty to inspect and maintain the property in a safe condition.
- c. The Hunter/Manager has a duty to warn other invitees/licensees/hunters of any dangers they may encounter.
- d. The Hunters/Managers must ensure that all hunters produce a current certificate of completion of a hunter's safety course and require that all hunters sign a waiver/release prepared by the County.
- e. The Hunters/Managers must Indemnify and hold harmless the County for their negligent acts and omissions and for the negligent acts and omissions of their employees, agents, and volunteers.
- f. The Hunters/Managers must provide Hunters insurance coverage for the event and name the County as an additional insured. The level of coverage for each policy must be 300K per incident and 1 million in the aggregate. Alachua County BoCC must be listed as an additional insured on each policy.
- g. The Hunters/Manages must provide general liability insurance coverage in the amount of 1 million per incident and 5 million in the aggregate. Alachua County BoCC must be listed as an additional insured on each policy. Under no circumstances should the Hunters/Managers be listed as an additional insured on our policy.

Many of the above listed mitigation measures have been incorporated into the Multi-Year Hunting License Agreement and Limited-Hunt License Agreements that the County has with private individuals and private groups, but most have not been incorporated into our current agreements with the State (e.g., WMD/FWC) for public recreational hunting activities on County-owned property. Staff requests policy direction as to whether the Board would like to include any of these Risk Mitigation Measures into our future agreements with the State.

3. Optional Additional Requirements applicable to Hunting Managed by the State of Florida.

- a. The State must provide trained Emergency Medical personnel along with appropriate equipment.

b. The State must provide regular patrols by Game and Wildlife personnel.

4. Optional Additional Requirements for Hunting by Private Individuals or a Private Group.

a. Require the Hunters/Managers to provide general and auto liability insurance policy. The level of coverage for each policy must be 1 million per incident and 5 million in the aggregate.